

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANSON WILLIAM HAMM,

Plaintiff,

V.

WASHINGTON DEPARTMENT OF  
CORRECTIONS ISRB .

## Defendant.

CASE NO. 3:20-cv-05951-JLR-BAT

## **REPORT AND RECOMMENDATION**

Plaintiff, a Washington State Department of Corrections prisoner, submitted a 42 U.S.C.

§ 1983 complaint alleging defendant “violated his “constitutional right to due process to include unlawful imprisonment. Dkt. 1 at 3, 4. The Court recommends the complaint be dismissed because plaintiff has failed to timely submit a sufficient application to proceed *in forma pauperis*, and because the complaint fails as a matter of law. As no amendment can cure the complaint’s deficiencies, the Court should dismiss the case rather than grant leave to amend.

## BACKGROUND

On September 24, 2020, plaintiff submitted for filing a § 1983 complaint alleging defendant “JSRB WA STATE DEPARTMENT OF CORRECTIONS” violated his

1 "constitutional right to due process to include unlawful imprisonment. Dkt. 1 at 3, 4. In specific,  
 2 plaintiff alleges:

3 My releas date was July 14, 2021 Dept of Corrections unlawfully  
 4 violated a Superior Court Judges Court order by once Again  
 5 Illeagaly changing my release date to July 31 2021 due process  
 6 that the United States Constitution guarantees I am sentialed to  
 7 WA State Dept of Corrections are clearly with the intent violating  
 8 courts order consistently pushing my release date further rout.  
 Damage and claims also constitute the crime of unlawful  
 imprisonment WA DOC does not have the power or authority to  
 influence or manipulate Court orders or unlawfully imprison  
 people DOC has given me no explanation for these unlawful  
 actions I do here belive I am entitaled to relieve.

9 *Id.* at 4-5. As relief he requests the Court order defendant to immediately release him from prison  
 10 and impose punitive damages. *Id.* 6. Because plaintiff declined to sign the written consent for  
 11 payment portion of his initial application to proceed *in forma pauperis* (Dkt. 1 at 2), the clerk of  
 12 court advised him his application was deficient and that he must submit a properly signed  
 13 application by October 26, 2020 or the case may be dismissed. Dkt. 2.

14 On October 2, 2020, plaintiff submitted another application and again failed to sign the  
 15 written consent for payment portion of his application. Dkt. 3. On October 5, 2020, the clerk  
 16 advised plaintiff he must submit a properly signed application by November 4, 2020 or the case  
 17 may be dismissed. Dkt. 4. As of this date, plaintiff has not responded to the clerk's October 5,  
 18 2020, request.

## 19 DISCUSSION

20 In this § 1983 action, plaintiff alleges the Indeterminate Sentence Review Board (ISRB)  
 21 Washington State Department of Corrections violated his constitutional rights. Dkt. 1 at 3. He  
 22 seeks money damages and immediate release from his prison sentence. Section 1983 creates a  
 23 cause of action for a plaintiff whose constitutional rights have been violated by any "person"

1 acting under color of law. 42 U.S.C. § 1983. However, for the purposes of § 1983 action, a state  
 2 is not a “person.” *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 (1997); *Will v.*  
 3 *Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989). Similarly, an agency that is an arm of the  
 4 state is also not a “person” under § 1983. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990); *see also*  
 5 *Alabama v. Pugh*, 438 U.S. 781, 782 (1978) (per curiam) (concluding that the suit against  
 6 the state Board of Corrections was barred by the Eleventh Amendment). The ISRB is an arm of  
 7 Washington State, is not a “person” and thus is not subject to suit under 42 U.S.C. § 1983. The  
 8 Court should accordingly dismiss the complaint under 28 U.S.C. § 1915(e)(2)(B).

9       The Court should also dismiss the complaint because the Eleventh Amendment creates a  
 10 jurisdictional bar to private damages actions against states in federal court. *See Quern v. Jordan*,  
 11 440 U.S. 332, 338-40 (1979). Plaintiff seeks monetary damages in his suit against the ISRB.  
 12 However, state parole boards are entitled to absolute immunity from suits by prisoners for  
 13 actions taken when processing and deciding parole applications. *Planned Parenthood Arizona,*  
 14 *Inc. v. Brnovich*, 172 F. Supp. 3d 1075, 1086 (D. Ariz. 2016) (“Eleventh Amendment immunity  
 15 extends to state departments, agencies, boards, and commissions, and to state employees acting  
 16 in their official capacity because a suit against them is regarded as a suit against the State itself.”)  
 17 (citing *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989); *see also Brown v. Cal.*  
 18 *Dep’t of Corr.*, 554 F.3d 747, 751 (9th Cir. 2009) (“[P]arole board members are entitled to  
 19 absolute immunity for parole board decisions.”). In Washington the ISRB functions as a parole  
 20 board. *See e.g. In re Personal Restraint of Dyer*, 164 Wn.2d 274, 280 (2008) (“this Court  
 21 directed the Indeterminate Sentence Review Board (ISRB) to redetermine the parolability of  
 22 Richard J. Dyer.”). Accordingly, plaintiff’s claim against the ISRB should be dismissed.

1       The Court notes plaintiff asks the Court to order defendants to immediately release him  
2 from his prison sentence. However, petitioner's § 1983 request for immediate release from his  
3 prison sentence is barred under *Heck, v. Humphrey*, 512 U.S. 477, 486 (1994) (explaining that  
4 civil tort actions are not appropriate vehicles for challenging the validity of a criminal conviction  
5 or sentence). The *Heck* decision precludes a prisoner's § 1983 claim that, if successful, would  
6 invalidate a conviction or sentence "where that conviction [or sentence] has not been reversed,  
7 expunged or called into question by issuance of a writ of habeas corpus." *Id.* at 486-87.

8       A prisoner challenging the duration of his conviction must bring that challenge via a  
9 habeas petition. *Preiser v. Rodriguez*, 411 U.S. 475, 488-89, (1973) (holding that habeas corpus  
10 is the exclusive remedy for a state prisoner who challenges the fact or duration of his  
11 confinement and seeks immediate or speedier release, even though such a claim may come  
12 within the literal terms of § 1983); see also *Butterfield v. Bail*, 120 F.3d 1023, 1024-25 (9th Cir.  
13 1997) (stating that prisoner's challenge to the procedures used in the denial of parole must be  
14 brought as a petition for writ of habeas corpus and not as a civil rights action under § 1983.  
15 Accordingly, plaintiff's § 1983 request for immediate release should be denied.

16       For the foregoing reasons the Court recommends the complaint be dismissed with  
17 prejudice because it names defendants who are not state actors for purposes of § 1983 action or  
18 who are immune. The request for immediate release is not relief that is available under § 1983  
19 due to the *Heck* bar. If the recommendation to dismiss with prejudice is not adopted, the Court  
20 should dismiss the case without prejudice for failure to pay the filing fee or to submit a sufficient  
21 application to proceed *in forma pauperis*.

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## **OBJECTIONS AND APPEAL**

This Report and Recommendation is not an appealable order. Therefore, a notice of appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the assigned District Judge enters a judgment in the case. Objections may be filed no later than **November 24, 2020**. The Clerk should note the matter for **November 27, 2020**, as ready for the District Judge's consideration. Objections shall not exceed eight pages. The failure to timely object may affect the right to appeal.

DATED this 10<sup>th</sup> day of November, 2020.

  
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BRIAN A. TSUCHIDA  
Chief United States Magistrate Judge